

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In Re: GREENE TECHNOLOGIES  
INCORPORATED,

Case No.: 17-60389  
Chapter 11

Debtor.

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**DISCLOSURE STATEMENT FOR THE DEBTOR'S PLAN OF  
REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Dated: Syracuse, New York  
January 23, 2018

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**I.**

**INTRODUCTION**

This is the disclosure statement (“Disclosure Statement”) in the small business chapter 11 bankruptcy case of GREENE TECHNOLOGIES INCORPORATED (“Debtor”). The Disclosure Statement contains information about the Debtor and describes the Debtor’s Plan of Reorganization (“Plan”), filed by the Debtor on January \_\_\_\_, 2018. A full copy of the Plan is attached to this Disclosure Statement as Exhibit “A”. ***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.***

On March 31, 2017 (the “Filing Date”), the Debtor commenced this bankruptcy case by filing a voluntary Chapter 11 petition under the United States Bankruptcy Code (“Code”), 11 U.S.C. § 101 et seq. Chapter 11 allows the Debtor, and under some circumstances, creditors and others parties in interest, to propose a Plan that allows the Debtor to reorganize its business. In this case, the Debtor is the party proposing the Plan sent to you and attached hereto as Exhibit “A”. This is a reorganizing plan in which the Debtor seeks to accomplish payments under the Plan by continuing to operate its business in Greene, New York in a successful and profitable manner.

The effective date of the proposed Plan is thirty (30) days following the date of the entry of the order of confirmation (the “Effective Date”).

The proposed distributions under the Plan are discussed at pages **10 - 13** of this Disclosure Statement. General unsecured creditors are classified in Class 6, and will receive a distribution of 6% of their allowed claims.

**A. Purpose of This Document**

This Disclosure Statement summarizes what is in the Plan, and tells you certain information relating to the Plan and the process the Court follows in determining whether or not to confirm the Plan.

**READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO KNOW ABOUT:**

- (1) **WHO CAN VOTE OR OBJECT,**
- (2) **WHAT THE TREATMENT OF YOUR CLAIM IS (i.e., what your claim will receive if the Plan is confirmed), AND HOW THIS TREATMENT COMPARES TO WHAT YOUR CLAIM WOULD RECEIVE IN LIQUIDATION,**
- (3) **THE HISTORY OF THE DEBTOR AND SIGNIFICANT EVENTS DURING THE BANKRUPTCY,**
- (4) **WHAT THINGS THE COURT WILL LOOK AT TO DECIDE WHETHER OR NOT TO CONFIRM THE PLAN,**
- (5) **WHAT IS THE EFFECT OF CONFIRMATION, AND**
- (6) **WHETHER THIS PLAN IS FEASIBLE.**

This Disclosure Statement cannot tell you everything about your rights. You should consider consulting your own lawyer to obtain more specific advice on how this Plan will affect you and what is the best course of action for you.

Be sure to read the Plan as well as the Disclosure Statement. The Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

The Code requires a Disclosure Statement to contain “adequate information” concerning the Plan. The Bankruptcy Court (“Court”) has conditionally approved this document as an adequate Disclosure Statement, containing enough information to enable parties affected by the Plan to make an informed judgment about the Plan. Any party can now solicit votes for or against the Plan.

**B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

THE COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING ON THE DEBTOR AND ON ALL CREDITORS AND INTEREST HOLDERS IN THIS CASE.

**1. Time and Place of the Confirmation Hearing**

The hearing where the Court will determine whether or not to confirm the Plan will take place on \_\_\_\_\_ 2018, at \_\_\_\_\_ {A.M./P.M.}, at the U.S. Bankruptcy Court, Alexander Pirnie Federal Building, 10 Broad Street, Utica, New York 13501.

**2. Deadline For Voting For or Against the Plan**

If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot and return the ballot in the enclosed envelope to Edward J. Fintel & Associates, 120 Walton Street, Suite 200, Syracuse, New York 13202 (“Debtor’s Attorney”).

Your ballot must be received by \_\_\_\_\_ or it will not be counted.

**3. Deadline For Objecting to the Confirmation of the Plan**

Objections to the confirmation of the Plan must be filed with the Court and served upon Debtor’s Attorney by \_\_\_\_\_.

**4. Identity of Person to Contact for More Information Regarding Plan**

Any interested party desiring further information about the Plan should contact Debtor’s Attorney.

**C. Disclaimer**

*The financial data relied upon in formulating the Plan is based on Debtor’s monthly operating reports as well as Debtor’s financial projections. The information contained in this Disclosure Statement is provided by Debtor’s Attorneys. The Plan Proponent represents that everything stated in the Disclosure Statement is true to the Proponent’s best knowledge.*

*(The Court has conditionally approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has conditionally approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted. The Court’s approval of this*

*Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until the date set forth on the enclosed Order).*

## **II.**

### **BACKGROUND**

#### **A. Description and History of the Debtor's Business**

Debtor is a domestic corporation, and was organized during 1988. Debtor is engaged in the manufacture and sales of custom metal fabrications to commercial, industrial and military customers. Debtor presently has 25 employees and one independent sales person. Debtor operates its business from the real property it owns at Grand and Clinton Street, Greene, New York ("Premises").

#### **B. Insider(s) of the Debtor**

Carol M. Rosenkrantz ("Rosenkrantz") is the President and Sole Shareholder of the Debtor. Both prior to and since the Filing Date, Rosenkrantz has been paid a weekly gross salary of \$1,600. Rosenkrantz is employed full-time by the Debtor. The Debtor also pays Rosenkrantz's medical insurance.

Rosenkrantz's son, Mark A. Rosenkrantz, is a full-time employee of the Debtor. Both prior to and since the Filing Date, Mark A. Rosenkrantz has been paid a weekly gross salary of \$1,993.02.

#### **C. Management of the Debtor Before and After the Bankruptcy**

The Debtor has, throughout its existence, been managed by Rosenkrantz. During the course of this bankruptcy proceeding and thereafter, the Debtor does not anticipate any changes in management.

#### **D. Events Leading to Chapter 11 Filing**

The circumstances leading to the filing of the instant chapter 11 petition are as follows:

For several years, Debtor had faced overseas competition fueled by the U.S. government's tariffs on imported raw material which favored the overseas competition. As a result of its decreased earnings, Debtor was unable to pay its real property tax obligations and its real property was scheduled for tax foreclosure sale by Chenango County, New York on March 31, 2014. Debtor filed a prior Chapter 11 proceeding in this Court on March 31, 2014, bearing case number 14-60524 ("Prior Case"). Despite its best efforts, Debtor was unable to get its plan of reorganization confirmed by the Court, and the Prior Case was dismissed by Order dated February 25, 2016.

After the dismissal, Debtor continued to operate and to pay its current real property taxes. However, Chenango County was unable, due to local laws, to accept a payment plan for the prior outstanding real property tax obligations. In order to stay the tax foreclosure sale by Chenango County scheduled on March 31, 2017, Debtor filed the instant bankruptcy case on March 31, 2017.

#### **E. Significant Events During the Bankruptcy**

##### **1. Bankruptcy Proceedings**

The following is a chronological list of significant events which have occurred during this case:

- A. April 4, 2017 - Order entered fixing the deadline of September 27, 2017, to file proofs of claim or interest for both governmental and non-governmental units.
- B. April 12, 2017 – Order entered authorizing Debtor to Maintain Existing Bank Accounts and Use Existing Checks.
- C. April 12, 2017 – Order entered authorizing Debtor to Pay Pre-Petition Compensation and Reimbursable Employee Benefits Including Medical and Other Benefits.
- D. April 27, 2017 – The Office of the United States Trustee filed its Notice of Inability to Appoint a Committee of Unsecured Creditors.
- E. May 3, 2017 - Final Order Granting Motion to Use Cash Collateral. The Order provides that secured claimholder, Kevin Rosenkrantz, is adequately protected by the pre-petition security interest granted by Debtor in all of Debtor's collateral. Debtor has been paying said claimholder \$1,000.00 monthly as adequate protection.



F. By Motion dated July 19, 2017, the United States Trustee sought dismissal or conversion of the instant chapter 11 proceeding based on the New York State Secretary of State's dissolution by proclamation of Debtor on April 27, 2011 ("Dismissal Motion"). Under New York Tax Law, the Secretary of State may dissolve a corporation by proclamation for failure to file tax reports for two consecutive years. Debtor and its accountant subsequently prepared and filed the outstanding tax returns and Debtor has been reinstated and is in good standing with the Secretary of State. The Dismissal Motion was adjourned from time to time and was withdrawn on January 17, 2018.

G. The secured mortgage claim of New York Business Development Corporation ("NYBDC"). Debtor believes that said mortgage was fully satisfied; however, NYBDC has taken the position that there is a balance still owing. Although the claim was scheduled as disputed and NYBDC did not file a proof of claim, Debtor has negotiated with NYBDC to allow it an unsecured claim of \$6,500.00 in exchange for NYBDC delivering to Debtor on or before the confirmation date of the plan a satisfaction of mortgage, termination of assignment of rents, and any other documents required to fully release NYBDC's mortgage and/or security interest against Debtor's real and personal property.

H. The Court has approved the employment of the following professionals:

1. Edward J. Fintel & Associates was approved, effective March 31, 2017, to serve as attorneys for the Debtor.
2. David Anderson, CPA was approved, effective August 16, 2017, to serve as accountant for the Debtor.

I. Debtor and its accountant have prepared and filed several years outstanding tax returns with the Internal Revenue Service and New York State Department of Taxation & Finance, and Debtor is now current on filing its tax returns. Debtor's accountant has filed an interim fee application in the sum of \$4,500 in connection with the preparation of the tax returns, which application is returnable before the Court on January 23, 2018. Debtor's accountant has also prepared the financial projections which are submitted herewith.

**2. Other Legal Proceedings**

Besides the proceedings discussed above, the Debtor is not currently involved in any non-bankruptcy legal proceedings.

**3. Actual and Projected Recovery of Preferential or Fraudulent Transfers**

Currently there are no fraudulent conveyance or preference actions pending, nor are any such actions anticipated in this case.

**4. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld.

**5. Procedures Implemented to Resolve Financial Problems**

To attempt to fix the problems that led to the bankruptcy filing, Debtor has implemented the following procedures:

The Debtor will continue to operate its business. Since the Filing Date, Debtor has been successful in bringing on new suppliers with more favorable terms and pricing structures than it had previously. Debtor has increased its marketing efforts including updating its website to bring in new accounts and more deeply penetrate existing accounts. During 2017, Debtor started to renegotiate contracts with some of its customers on specialty items resulting in increased revenues of \$40,000.

Debtor intends to renegotiate additional existing contracts valued at approximately 1 million dollars and anticipates average price increase of 8% per contract. Debtor has recently hired an independent sales representative organization, which will market Debtor's speciality skills to a much broader market with first year expected gross sales projected at \$150,000.

Debtor will also make changes in personnel in order to save money. Debtor expects to reduce the hours of the he operations manager, reduce two (2) entry level

employees, and eliminate the production control manager position, and replace this function with four (4) existing floor supervisors.

**6. Historical and Future Financial Conditions**

The identity and fair market value of the estate's assets are listed in Exhibit B. Debtor's financial history and future projections are set forth in Exhibit C. Debtor's most recent monthly operating report and summary of prior reports are set forth in Exhibit D.

**III.**

**SUMMARY OF THE PLAN OF REORGANIZATION**

**A. What Creditors and Interest Holders Will Receive Under the Proposed Plan**

As required by the Bankruptcy Code, the Plan classifies claims and interests in various classes according to their right to priority. The Plan states whether each class of claims or interests is impaired or unimpaired. The Plan provides the treatment each class will receive.

**B. Unclassified Claims**

Certain types of claims are not placed into voting classes; instead they are unclassified. They are not considered impaired and they do not vote on the Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. As such, the Proponent has not placed the following claims in a class.

**1. Administrative Expenses**

Administrative expenses are claims for costs or expenses of administering the Debtor's Chapter 11 case which are allowed under Code section 507(a)(2). The Code requires that all administrative claims be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists all of the Debtor's § 507(a)(2) administrative claims and their treatment under the Plan:

<u>Name</u>	<u>Amount Owed*</u>	<u>Treatment</u>
Expenses arising in the ordinary course of business after the Filing Date	N/A	If applicable, paid according to terms of the obligation.
Professional Fees to be paid to Edward J. Fintel & Associates, as approved by the Court	\$20,000.00 (estimated)	Paid in full on the Effective Date of the Plan, or according to separate written agreement, or according to the Court if such fees have not been approved by the Court on the Effective Date.
Professional Fees to be paid to David Anderson, CPA, as approved by the Court	\$2,500.00 (estimated)	Paid in full on the Effective Date of the Plan, or according to separate written agreement, or according to the Court if such fees have not been approved by the Court on the Effective Date.
Clerk's Office Fees	N/A	Paid in full on Effective Date, if applicable
Office of the U.S. Trustee Fees	\$4,875.00	Paid in full on Effective Date, if unpaid

\*The amounts provided above are estimates and are therefore subject to change.

Court Approval of Fees Required:

The Court must rule on all fees listed in this chart before the fees will be owed. For all fees except Clerk's Office fees and U.S. Trustee's fees, the professional in question must file and serve a properly noticed fee application and the Court must rule on

the application. Only the amount of fees allowed by the Court will be owed and required to be paid under this Plan.

As indicated above, the Debtor will need to pay one hundred percent (100%) worth of administrative claims on the Effective Date of the Plan unless the claimant has agreed to be paid later or the Court has not yet ruled on the claim. As indicated elsewhere in this Disclosure Statement, Debtor will have approximately \$75,000.00 of cash on hand on the Effective Date of the Plan. The source of this cash will be net operating income generated since the Filing Date.

## 2. Priority Tax Claims

Priority tax claims are certain unsecured income, employment and other taxes described by Code Section 507(a)(8). The Code requires that each holder of such a 507(a)(8) priority tax claim receive the present value of such claim in deferred cash payments, over a period not exceeding six years from the date of the assessment of such tax.

All Priority Tax Claim holders shall accept partial payments pursuant to the terms of the Plan and shall credit partial payments at the time of receipt.

The following chart lists all of the Debtor's Section 507(a)(8) priority tax claims and their treatment under the Plan:

<u>Description</u>	<u>Amount Owed</u>	<u>Treatment</u>
<ul style="list-style-type: none"> <li>● Name = NYS Department of Taxation &amp; Finance</li> <li>● Type of tax = Corporate</li> <li>Date tax assessed = 2016 – 2017.</li> </ul>	\$518.73	The amount owed New York State Department of Taxation and Finance represents assessed liabilities for the 2016 corporate tax return and 1Q17 withholding tax. Debtor shall pay the claim with interest at the rate of 7.5 % per year over 4 months, at \$136.92/month, beginning on the Effective Date.
<ul style="list-style-type: none"> <li>● Name = NYS Dept of Labor</li> <li>● Type of tax = Unemployment Ins.</li> <li>Date tax assessed = 2014</li> </ul>	\$ 14,178.94	The amount owed to New York State Department of Labor will be paid without interest over 60 months, at \$ 394.00/month, beginning on the Effective Date.

<ul style="list-style-type: none"> <li>● Name = Internal Revenue Service</li> <li>● Type of tax = FUTA</li> <li>Date tax assessed = 2014 &amp; 2017</li> </ul>	\$4,860.71	The amount owed to Internal Revenue Service is 2014 & 2017 FUTA liability. Debtor shall pay the claim with interest at the rate of 4 % per year over 36 months at \$148.50/month, beginning on the Effective Date.
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All Priority Tax Claim holder shall accept partial payments pursuant to the terms of the Plan and shall credit partial payments at the time of receipt.

**C. Classified Claims and Interests**

**1. Classes of Secured Claims**

Secured claims are claims secured by liens on property of the estate. The following chart lists the Debtor's secured pre-petition claims and their proposed treatment under the Plan:

<u>CLASS#</u>	<u>DESCRIPTION</u>	<u>IMPAIRED</u> (Y/N)	<u>TREATMENT</u>
1	Chenango County Treasurer <ul style="list-style-type: none"> <li>● Total amt of secured claim = \$ 263,910.37</li> </ul>	N	Debtor will pay \$263,910.39 with interest at 12%/year on this claim, consisting of monthly payments of \$4,240.70 beginning on the Effective Date for 120 months. Chenango County Treasurer shall accept partial payments pursuant to the terms of the Plan and shall credit partial payments at the time of receipt.
2	Kevin Rosenkrantz <ul style="list-style-type: none"> <li>● Total amt of secured claim = \$550,000.00</li> </ul>	Y	Debtor has been making monthly adequate protection payments of \$1,000 to claimholder during pendency of this proceeding. Debtor will execute a promissory note in the principal sum of \$250,000, with annual interest at 5%, for 15 years, with monthly payment of \$1,976.98 and payment to commence May, 2020.  Prior to May 2020, Debtor will continue to pay \$1,000/month for the first 24 months beginning on the Effective Date, Claimholder will retain his lien in Debtor's personal property.

3	<p>Suburban Propane</p> <ul style="list-style-type: none"> <li>● Total amt of secured claim = \$19,451.46.</li> </ul>	N	Debtor will pay this secured judgment claim in full with interest at 9%/year, consisting of monthly payments of \$484.05 beginning on the Effective Date for 48 months. Within 30 days of payment in full of its claim, Suburban Propane shall file a satisfaction of judgment with the Chenango County Clerk's office.
4	<p>New York Business Development Corporation ("NYBDC")</p> <ul style="list-style-type: none"> <li>● Total amt of secured claim = \$11,898.85 – scheduled as disputed.</li> </ul>	Y	Debtor expects to settle this claim by allowing NYBDC an unsecured claim in the sum of \$6,500, to be paid as a Class 65 claim. On or before the confirmation of the plan, NYBDC shall deliver to Debtor a satisfaction of mortgage, termination of assignment of rents, and any other document(s) required to satisfy and/or terminate its mortgage and security interest in any of Debtor's real and personal property.

## 2. Classes of Priority Unsecured Claims

Priority claims that are referred to in Code Sections 507(a)(4), (5), (6), (7), and (8) are **not** placed in classes. The priority claims are set forth above in section III.B.2.

## 3. Class of General Unsecured Claims

General unsecured claims are unsecured claims not entitled to priority under Code Section 507(a). The following chart identifies this Plan's treatment of the classes containing all of Debtor's general unsecured claims:

<u>CLASS#</u>	<u>DESCRIPTION</u>	<u>IMPAIRED</u> (Y/N)	<u>TREATMENT</u>
5	<p>Convenience Class (all claims less than or equal to \$400.00)</p> <ul style="list-style-type: none"> <li>● Total amt of claims = \$3,941.82<sup>^</sup></li> </ul>	Y	Debtor will pay an amount equal to twenty five percent (25%) percent of all Class 5 claims. Payment of Class 5 claims will be made in full upon the Effective Date. Currently there are 17 holders of Class 5 claims, Total payment to these holders will equal \$985.46.
6	<p>General unsecured Claims<sup>^</sup></p> <ul style="list-style-type: none"> <li>● Total amt of claims = \$355,242.99</li> </ul>	Y	Debtor will pay an amount equal to six (6%) of all allowed Class 6 claims. Payment of Class 6 claims will begin on the 13 <sup>th</sup> month after the Effective Date and continue thereafter for forty-eight (48) months or until paid in full. Each monthly payment will be \$445.00 for a total payout of \$21,360.

**^Creditors holding allowed unsecured Class 6 claims in excess of \$400.00 may elect to opt into Class 5 provided that any creditor so electing must agree to reduce their claim to \$400.00. IF ALL EIGHTEEN (18) CREDITORS WHO HOLD CLAIMS TOTALING BETWEEN \$401.00 AND \$2,000.00 OPT INTO CLASS 5, DEBTOR WILL BE REQUIRED TO PAY AN ADDITIONAL \$1,800.00 TO SATISFY ALL CLASS 5 CLAIMS AS OF THE EFFECTIVE DATE.**

#### **4. Class(es) of Interest Holders**

Interest holders are the parties who hold ownership interest (i.e., equity interest) in the Debtor. If the Debtor is a corporation, entities holding preferred or common stock in the Debtor are interest holders. If the Debtor is a partnership, the interest holders include both general and limited partners. If the Debtor is an individual, the Debtor is the interest holder. The following chart identifies the Plan's treatment of the class of interest holders:

<b><u>CLASS #</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>IMPAIRED (Y/N)</u></b>	<b><u>TREATMENT</u></b>
7	Interest holders	N	Rosenkrantz is Debtor's sole shareholder and, as such, is the only holder of a Class 7 Equity Interest. Rosenkrantz will retain her equity interest in Debtor, but will receive no distribution. Class 7 will not be entitled to vote.

#### **D. Means of Effectuating the Plan**

##### **1. Funding for the Plan**

The Plan will be funded by the Debtor's cash on hand as well as net operating income earned as a result of its operation of its business in Greene, New York. During the pendency of this Chapter 11 case, Debtor's net operating income has averaged approximately \$10,534.41 per month.

##### **2. Post-confirmation Management**

Debtor does not anticipate any changes in management after confirmation of its Plan. Rosenkrantz will continue to serve as President and sole shareholder of the Debtor after confirmation of its plan. Her salary will remain at \$1,600.00 per week.



**3. Disbursing Agent**

Debtor shall act as the disbursing agent for the purpose of making all distributions provided for under the Plan. The disbursing agent shall serve without bond and shall not receive compensation or reimbursement for distribution services rendered and expenses incurred pursuant to the Plan.

**E. Risk Factors**

The proposed Plan has certain risks that might affect the Debtor's ability to make payments and other distributions required under the Plan. For example, the proposed Plan payments are based, in part, on projections for the Debtor's business. Said projections assume that the cost of goods sold and the cost of labor will increase 1% per year, and that sales will increase 5% per year. As with all businesses, there is a risk that Debtor's business may fail to perform as anticipated. For example, in the event there are uncollectable accounts receivable, if the costs of goods increase significantly, or if there is a general slowing of the economy, Debtor's business can be adversely affected.

The above risk factors should not be regarded as constituting the only risks involved in connection with the Plan and its implementation.

**F. Other Provisions of the Plan**

**1. Executory Contracts and Unexpired Leases**

**a. Assumptions**

The following are the unexpired leases and executory contracts to be assumed as obligations of the reorganized Debtor under this Plan: NONE

**b. Rejections**

The following are the unexpired leases and executory contracts to be rejected by Debtor under this Plan: NONE.

**c. Partial Payments of Taxes:** Any taxing authority provided for and being treated in the Plan shall accept partial payments pursuant to the terms of the Plan and shall credit partial payments at the time of receipt.

**2. Retention of Jurisdiction.**

The Bankruptcy Court will retain jurisdiction until there is substantial consummation of the Plan.

**G. Tax Consequences of Plan**

**CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS.** The following disclosure of possible tax consequences is intended solely for the purpose of alerting readers about possible tax issues this Plan may present to the Debtor. The Proponent CANNOT and DOES NOT represent that the tax consequences contained below are the only tax consequences of the Plan because the Tax Code embodies many complicated rules which make it difficult to state completely and accurately all the tax implications of any action.

The following are the tax consequences which the Plan will have on the Debtor's tax liability:

**1. Cancellation of Indebtedness:**

Under the United States Tax Code, a taxpayer generally must include in gross income the amount of any cancellation of indebtedness income ("COD income") realized during the taxable year. Section 108 of the Tax Code provides an exception to this general rule, however, if the cancellation occurs in a case under the Bankruptcy Code, but only if the taxpayer is under the jurisdiction of the Bankruptcy Code and the cancellation is granted by the Bankruptcy Court or is pursuant to a plan approved by the Bankruptcy Court.

Section 108 of the Tax Code requires the amount of COD income so excluded from gross income to be applied to reduce certain tax attributes of the taxpayer. The tax attributes that may be subject to reduction include the taxpayer's net operating losses and net operating loss carryovers, certain tax credits and most tax credit carryovers, capital losses and capital loss carryovers, tax bases in assets, and foreign tax credit carryovers. Attribute reduction is calculated only after the tax for the year of discharge has been determined. Section 108 of the Tax Code further provides that a taxpayer does not

realize COD income from the cancellation of indebtedness to the extent that payment of such indebtedness would have given rise to a deduction.

#### **IV.**

#### **CONFIRMATION REQUIREMENTS AND PROCEDURES**

PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THIS PLAN SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON CONFIRMING A PLAN OF REORGANIZATION IS VERY COMPLEX. The following discussion is intended solely for the purpose of alerting readers about basic confirmation issues, which they may wish to consider, as well as certain deadlines for filing claims. The proponent CANNOT and DOES NOT represent that the discussion contained below is a complete summary of the law on this topic.

Many requirements must be met before the Court can confirm a Plan. Some of the requirements include that the Plan must be proposed in good faith, acceptance of the Plan, whether the Plan pays creditors at least as much as creditors would receive in a Chapter 7 liquidation, and whether the Plan is feasible. These requirements are not the only requirements for confirmation.

#### **A. Who May Vote or Object**

##### **1. Who May Object to Confirmation of the Plan**

Any party in interest may object to the confirmation of the Plan, but as explained below not everyone is entitled to vote to accept or reject the Plan.

##### **2. Who May Vote to Accept/Reject the Plan**

A creditor or interest holder has a right to vote for or against the Plan if that creditor or interest holder has a claim which is both (1) allowed or allowed for voting purposes and (2) classified in an impaired class.

##### **a. What Is an Allowed Claim/Interest**

As noted above, a creditor or interest holder must first have an allowed claim or interest to have the right to vote. Generally, any proof of claim or interest will be allowed, unless a party in interest brings a motion objecting to the claim. When an objection to a claim or interest is filed, the creditor or interest holder holding the claim or

interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or interest for voting purposes.

THE BAR DATE FOR FILING A PROOF OF CLAIM IN THIS CASE WAS September 27, 2017. A creditor or interest holder may have an allowed claim or interest even if a proof of claim or interest was not timely filed. A claim is deemed allowed if (1) it is scheduled on the Debtor's schedules and such claim is not scheduled as disputed, contingent, or unliquidated, and (2) no party in interest has objected to the claim. An interest is deemed allowed if it is scheduled and no party in interest has objected to the interest.

**b. What Is an Impaired Claim/Interest**

As noted above, an allowed claim or interest only has the right to vote if it is in a class that is impaired under the Plan. A class is impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class. For example, a class comprised of general unsecured claims is impaired if the Plan fails to pay the members of that class 100% of what they are owed.

In this case, the Proponent believes that Classes 2, 4, 5 and 6 are impaired and that holders of claims in these classes are therefore entitled to vote to accept or reject the Plan. The Proponent believes that Class 1 and 6 claims are unimpaired and that holders of claims in each of this class therefore do not have the right to vote to accept or reject the Plan. Parties who dispute the Proponent's characterization of their claim or interest as being impaired or unimpaired may file an objection to the Plan contending that the Proponent has incorrectly characterized the class.

**3. Who is Not Entitled to Vote**

The following five types of claims are not entitled to vote: (1) claims that have been disallowed; (2) claims in unimpaired classes; (3) claims entitled to priority pursuant to Code sections 507(a)(1), (a)(2), and (a)(8); (4) claims in classes that do not receive or retain any value under the Plan; and (5) claims that were listed in the Debtor's Schedules as disputed, contingent or unliquidated for which the Creditor did not timely file a proof of claim. Claims in unimpaired classes are not entitled to vote because such classes are deemed to have accepted the Plan. Claims entitled to priority pursuant to Code sections 507(a)(1), (a)(2), and (a)(7) are not entitled to vote because such claims are not placed in

classes and they are required to receive certain treatment specified by the Code. Claims in classes that do not receive or retain any value under the Plan do not vote because such classes are deemed to have rejected the Plan. EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY STILL HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN.

**4. Who Can Vote in More Than One Class**

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim is entitled to accept or reject a Plan in both capacities by casting one ballot for the secured part of the claim and another ballot for the unsecured claim.

**5. Votes Necessary to Confirm the Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cramdown” on non-accepting classes, as discussed later in Section {IV.A.8.}.

**6. Votes Necessary for a Class to Accept the Plan**

A class of claims is considered to have accepted the Plan when more than one-half ( $1/2$ ) in number and at least two-thirds ( $2/3$ ) in dollar amount of the claims which actually voted, voted in favor of the Plan. A class of interests is considered to have accepted the Plan when at least two-thirds ( $2/3$ ) in amount of the interest-holders of such class which actually voted, voted to accept the Plan.

**7. Treatment of Nonaccepting Classes**

As noted above, even if all impaired classes do not accept the proposed Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner required by the Code. The process by which nonaccepting classes are forced to be bound by the terms of the Plan is commonly referred to as “cramdown.” The Code allows the Plan to be “crammed down” on non-accepting classes of claims or interests if it meets all consensual requirements except the voting requirements of 1129(a)(8) and if the Plan does not “discriminate unfairly” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan as referred to in 11 U.S.C. § 1129(b) and applicable case law.

**8. Request for Confirmation Despite Nonacceptance by Impaired**

**Class(es)**

The party proposing this Plan asks the Court to confirm this Plan by cramdown on impaired Classes 2, 4, 5 and 6 if any of these classes do not vote to accept the Plan.

There are no classes of claims set forth in this Disclosure Statement and the Plan that are not subject to being crammed down. In the event Debtor seeks a cramdown, Rosenkrantz will be required to cancel her equity interest.

**B. Liquidation Analysis**

Another confirmation requirement is the “Best Interest Test”, which requires a liquidation analysis. Under the Best Interest Test, if a claimant or interest holder is in an impaired class and that claimant or interest holder does not vote to accept the Plan, then that claimant or interest holder must receive or retain under the Plan property of a value not less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

In a Chapter 7 case, the Debtor’s assets are usually sold by a Chapter 7 trustee. Secured creditors are paid first from the sales proceeds of properties on which the secured creditor has a lien. Administrative claims are paid next. Next, unsecured creditors are paid from any remaining sales proceeds, according to their rights to priority. Unsecured creditors with the same priority share in proportion to the amount of their allowed claim in relationship to the amount of total allowed unsecured claims. Finally, interest holders receive the balance that remains after all creditors are paid, if any.

For the Court to be able to confirm this Plan, the Court must find that all creditors and interest holders who do not accept the Plan will receive at least as much under the Plan as such holders would receive under a Chapter 7 liquidation. The Plan Proponent maintains that this requirement is met here because holders of claims in all classes will realize a significantly higher percentage of their claims when compared to any distribution under a Chapter 7.

Certain assumptions have been made with respect to this Liquidation Analysis, as follows:

A. Goodwill and other intangible assets have no realizable value in a liquidation.

B. Accounts Receivable – collections during a liquidation would be significantly compromised since customers may attempt to offset outstanding amounts owed to the Debtor against alleged damage and breach of contract claims. Therefore, Debtor assumes that only 50% of its outstanding accounts receivable would be collected.

C. Wind-Down Costs – Wind-down costs include employee benefits and compensation for no more than five (5) employees, general and administrative expenses, and fixed overhead costs. It is estimated that the wind-down of Debtor’s business would take approximately 3-5 months and that the costs would total around \$35,000.

D. Chapter 7 Professional Fees include legal and accounting fees expected to be incurred by the Chapter 7 Trustee during a wind-down period – estimated to be 25% of the Chapter 7 Trustee’s commissions.

E. Inventory, Office Furniture, Machinery & Equipment – the Chapter Trustee would likely sell these assets of the Debtor by auction, resulting in a significantly lower sales price than full market value. Therefore, Debtor has valued these assets at 50% of the market value

Below is a demonstration, in balance sheet format, that all creditors and interest holders will receive at least as much under the Plan as such creditor or interest holder would receive under a Chapter 7 liquidation:

**ASSETS VALUE AT LIQUIDATION VALUES  
(As of Filing Date) :**

ASSETS	
a. Cash on hand/Bank accounts	\$ 53,465.98
b. Accounts receivable	57,213.17
c. Inventory	318,529.50
d. Office furniture & fixtures	1,750.00
e. Machinery & equipment	76,000.00
g. Building & Land	500,000.00
h. Other Property	<u>9,882.34</u>
<b>TOTAL ASSETS AT LIQUIDATION VALUE:</b>	<b>\$1,016,840.99</b>
<b>Less:</b>	
Secured creditor’s recovery:	\$845,260.00
<b>Less:</b>	
Chapter 7 trustee fees and expenses-(Code §326)	55,505.23
<b>Less:</b>	
Chapter 7 administrative expenses	13,919.23
<b>Less:</b>	
Wind down costs:	35,000.00

<b>Less:</b>	
Chapter 11 administrative expenses (est.):	27,375.00
<b>Less:</b>	
Priority claims,	
excluding administrative expense claims	<u>19,558.38</u>
	<b>(996,617.84)</b>
(1) Balance for unsecured claims	\$ 20,223.15
(2) Total amt of unsecured claims	\$ 359,184.81

% OF THEIR CLAIMS WHICH UNSECURED CREDITORS WOULD RECEIVE	
OR RETAIN IN A CH. 7 LIQUIDATION: =	<u>5.63%</u>
% OF THEIR CLAIMS WHICH UNSECURED CREDITORS IN CLASS 5 WILL RECEIVE	
OR RETAIN UNDER THIS PLAN: =	<u>25 %</u>
% OF THEIR CLAIMS WHICH UNSECURED CREDITORS IN CLASS 5 WILL RECEIVE	
OR RETAIN UNDER THIS PLAN: =	<u>6 %</u>

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### C. Feasibility

Another requirement for confirmation involves the feasibility of the Plan, which means that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.

There are at least two important aspects of a feasibility analysis. The first aspect considers whether the Debtor will have enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses which are entitled to be paid on such date. The Plan Proponent maintains that this aspect of feasibility is satisfied as illustrated here:

Cash Debtor will have on hand by Effective Date from its Ordinary Receipts	\$ 75,000.00*
<b>To Pay:</b> Administrative claims	- 22,500.00°
<b>To Pay:</b> Statutory costs & charges	- 4,875.00
<b>To Pay:</b> Other Plan Payments due on Effective Date	<u>- 7,389.63</u>
Balance after paying these amounts.....	\$ 40,235.37

\*Estimated



°Debtor anticipates that professionals will agree to installment payments once their fees are approved by the Court

The second aspect considers whether the Proponent will have enough cash over the life of the Plan to make the required Plan payments. The Proponent has provided financial statements which include both historical and projected financial information. Please refer to Exhibits C and D for the relevant financial information.

YOU ARE ADVISED TO CONSULT WITH YOUR ACCOUNTANT OR FINANCIAL ADVISOR IF YOU HAVE ANY QUESTIONS PERTAINING TO THESE FINANCIAL STATEMENTS.

## **V.**

### **EFFECT OF CONFIRMATION OF PLAN**

#### **A. Discharge**

On the Effective Date of the Plan, Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the Effective Date, to the the extent specified in 11 U.S.C. § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt: (i) imposed by the Plan; (ii) of a kind specified in §1141(d)(6)(A) if a timely complaint was filed in accordance with Fed. R. Bankr. P. 4007(c); or (iii) of a kind specified in §1141(d)(6)(B). After the Effective Date, your claims against Debtor will be limited to debts described in clauses (i) through (iii) of the preceding sentence.

#### **B. Revesting of Property in the Debtor**

Except as provided in Section {V.E.}, and except as provided elsewhere in the Plan, the confirmation of the Plan revests all of the property of the estate in the Debtor.

#### **C. Modification of Plan**

The Debtor may modify the Plan at any time before confirmation. However, the Court may require a new disclosure statement and/or revoting on the Plan.

The Debtor may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modifications after notice and a hearing.

**D. Post-Confirmation Status Report**

Unless the Debtor has filed its motion seeking entry of a final decree closing the case, within 120 days of the entry of the order confirming the Plan, Debtor shall file a status report with the Court explaining what progress has been made toward consummation of the confirmed Plan. The status report shall be served on the United States Trustee, the twenty largest unsecured creditors, and those parties who have requested special notice. Further status reports shall be filed every 120 days and served on the same entities.

**E. Post-Confirmation Conversion/Dismissal**

A creditor or party in interest may bring a motion to convert or dismiss the case under § 1112(b), after the Plan is confirmed, if there is a default in performing the Plan. If the Court orders, the case converted to Chapter 7 after the Plan is confirmed, then all property that had been property of the Chapter 11 estate, and that has not been disbursed pursuant to the Plan, will revert in the Chapter 7 estate. The automatic stay will be reimposed upon the revested property, but only to the extent that relief from stay was not previously authorized by the Court during this case.

The order confirming the Plan may also be revoked under very limited circumstances. The Court may revoke the order if the order of confirmation was procured by fraud and if the party in interest brings an adversary proceeding to revoke confirmation within 180 days after the entry of the order of confirmation.

**F. Final Decree**

Once the estate has been fully administered as referred to in Bankruptcy Rule 3022, the Debtor shall file a Report of Substantial Consummation with a motion for final decree as set forth in Local Bankruptcy Rule 3022-1.

Date: 1/23/18

/s/Carol M. Rosenkrantz  
Carol M. Rosenkrantz, President of Debtor

/s/Edward J. Fintel  
Edward J. Fintel, Esq  
Bar Roll No.: 506268  
Edward J. Fintel & Associates  
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